

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
United States Coast Guard
National Pollution Funds Center

US COAST GUARD STOP 7100
4200 WILSON BLVD STE 1000
ARLINGTON VA 20598-7100

Fax: 703-872-6113

5890

5/09/2014

State of Ohio Environmental Protection Agency

Re: Claim Number G02AAG-0001

Dear Mr. Snyder:

The National Pollution Funds Center (NPFC), in accordance with the Oil Pollution Act (OPA) (33 U.S.C. 2701 et seq.), offers \$62,704.84 as full compensation for OPA claim number G02AAG-0001.

This determination is based on an analysis of the information submitted. Please see the attached determination for further details regarding the rationale for this decision.

All costs that are not determined as compensable are considered denied. You may make a written request for reconsideration of this claim. The reconsideration must be received by the NPFC within 60 days of the date of this letter and must include the factual or legal basis of the request for reconsideration, providing any additional support for the claims. Reconsideration will be based upon the information provided and a claim may be reconsidered only once. Disposition of the reconsideration will constitute final agency action. Failure of the NPFC to issue a written decision within 90 days after receipt of a timely request for reconsideration shall, at the option of the claimant, be deemed final agency action. All correspondence should include corresponding claim number.

Mail reconsideration request to:

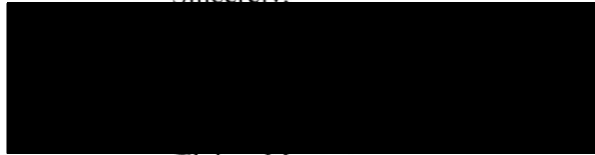
Director
NPFC CA MS 7100
US COAST GUARD
4200 Wilson Boulevard, Suite 1000
Arlington, VA 20598-7100

If you accept this determination, please sign the enclosed Acceptance / Release Agreement where indicated and return to the above address.

If we do not receive the signed original Acceptance / Release Agreement within 60 days of the date of this letter, the determination is void. If the determination is accepted, an original signature and a valid tax identification number (EIN or SSN) are required for payment. If you are a Claimant that has submitted other claims to the National Pollution Funds Center, you are required to have a valid Contractor Registration record prior to payment. If you do not, you may register free of charge at www.SAM.gov. Your payment will be mailed or electronically deposited in your account within 60 days of receipt of the Release Agreement.

If you have any questions or would like to discuss the matter, you may contact me at the above address or by phone at 1-800-280-7118.

Sincerely,



Claims Manager
U.S. Coast Guard

ENCL: Claim Summary / Determination Form
Acceptance/Release Form
Summary of Costs spread sheet

U.S. Department of
Homeland Security

**United States
Coast Guard**



Director
National Pollution Funds Center

US COAST GUARD STOP 7100
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Claim Number: G02AAG-0001	Claimant Name: State of Ohio Environmental Protection Agency ATTN: Mr. Steven Snyder 347 North Dunbridge Road Bowling Green, OH 43402
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I, the undersigned, ACCEPT this settlement offer of \$62,704.84 as full and final compensation for removal costs arising from the specific claim number identified above. With my signature, I also acknowledge that I accept as final agency action all costs submitted with subject claim that were denied in the determination and for which I received no compensation.

This settlement represents full and final release and satisfaction of the amounts paid from the Oil Spill Liability Trust Fund under the Oil Pollution Act of 1990 for this claim. I hereby assign, transfer, and subrogate to the United States all rights, claims, interest and rights of action, that I may have against any party, person, firm or corporation that may be liable for the amounts paid for which I have been compensated under this claim. I authorize the United States to sue, compromise or settle in my name and the United States fully substituted for me and subrogated to all of my rights arising from and associated with those amounts paid for which I am compensated for with this settlement offer. I warrant that no legal action has been brought regarding this matter and no settlement has been or will be made by me or any person on my behalf with any other party for amounts paid which is the subject of this claim against the Oil Spill Liability Trust Fund (Fund).

This settlement is not an admission of liability by any party.

With my signature, I acknowledge that I accept as final agency action all amounts paid for this claim and amounts denied in the determination for which I received no compensation.

I, the undersigned, agree that, upon acceptance of any compensation from the Fund, I will cooperate fully with the United States in any claim and/or action by the United States against any person or party to recover the compensation. The cooperation shall include, but is not limited to, immediately reimbursing the Fund for any compensation received from any other source for those amounts paid for which the Fund has provided compensation, by providing any documentation, evidence, testimony, and other support, as may be necessary for the United States to recover from any other person or party.

I, the undersigned, certify that to the best of my knowledge and belief the information contained in this claim represents all material facts and is true. I understand that misrepresentation of facts is subject to prosecution under federal law (including, but not limited to 18 U.S.C. §§ 287 and 1001).

_____ Title of Person Signing	_____ Date of Signature
_____ Typed or Printed Name of Claimant or Name of Authorized Representative	_____ Signature

_____ Title of Witness	_____ Date of Signature
_____ Typed or Printed Name of Witness	_____ Signature

_____ DUNS #	_____ Bank Routing Number	_____ Bank Account Number
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CLAIM SUMMARY / DETERMINATION FORM

Claim Number	: G02AAG-0001
Claimant	: State of Ohio Environmental Protection Agency
Type of Claimant	: State
Type of Claim	: Removal Costs
Claim Manager	: Alyssa Lombardi
Amount Requested	: \$141,059.56

FACTS:

A. Oil Spill Incident:

The United States Environmental Protection Agency (USEPA) Region V reports that on June 19, 1992, United States Coast Guard (USCG) Marine Safety Office (MSO) Toledo responded to an oil spill in Oregon, Ohio that had originated from a storm sewer outfall that emptied into Driftmeyer Ditch and ran alongside DuPont Road. This ditch drained into Maumee Bay, a nexus to Lake Erie, both of which are navigable waterways of the US. Further investigation identified a catch basin on the sewer line that was heavily contaminated with oil. Repairs to the storm sewer and catch basin were made by the City of Oregon in order to prevent oil in the saturated soil from entering the sewer system. Repairs were also made to a toe-drain system in the adjacent Toledo Edison fly ash impoundment berm that also heavily contaminated with oil. A three month investigation into the discharge couldn't identify the source of the spill. MSO Toledo indicated that further source area investigation would be referred to the USEPA upon completion of the sewer repairs although it appears no formal referral occurred until 11 years later when another large oil pollution release to the same storm sewer system happened.

On April 13, 2002, MSO Toledo was notified of an oil spill in Oregon, Ohio that had impacted a large section of the same Driftmeyer Ditch. As a responsible party was not immediately identified, the city of Oregon was ordered to conduct removal activities. The subsequent investigation revealed that the Driftmeyer Ditch, which ran parallel to DuPont Road, was fed by a sewer system and toe-drain system from a fly ash impoundment berm of Toledo Edison, a subsidiary company of First Energy. However, oil sample analysis revealed that oil sampled from the toe-drain system didn't match the oil recovered from the sewer system. Further investigation revealed oil contaminated soil on both sides of DuPont Road and the spill site consisted of public lands on both sides of the road and a section of Driftmeyer Ditch. Citgo Petroleum, Wolverine Pipeline and First Energy of Ohio are located on the east side of the road while BP Petroleum is located on the west side of the road.

Unable to conduct the comprehensive investigation needed to determine the party responsible for the discharge of oil, MSO Toledo made a formal request to USEPA Region V to assume the role as Federal On-Scene Coordinator (FOSC). Sample analysis conducted using the spill samples collected from the June 19, 1992 spill and the April 13, 2002 spill, revealed that the samples were from a common source.

On May 16, 2003, USEPA Region V FOSC, Mr. Partap Lall, assumed control of the investigation and issued a Pollution Removal Funding Authorization (PRFA) to the Ohio EPA in order for them to oversee the investigation and subsequent removal activities. This

PRFA remained in effect until 2008 although Ohio EPA never billed due to the ongoing nature and expansion of the original investigation. It was later determined that the scope of work had expanded beyond the parameters of the PRFA, so the PRFA was closed with the understanding that the Ohio EPA would submit a claim to the NPFC at the conclusion of the response activities.

This spill was reported to the National Response Center (NRC) via report # 599563.

B. Description of removal actions performed:

The Claimant, OEPA, arrived on scene and provided oversight throughout the ongoing cleanup and removal activities. Additionally, OEPA's supervisory oversight included potential Responsible Party (RP) negotiations (though, to date, no RP has been identified), as well as the planning and implementation of the source investigations and removal actions.

It should be noted here that the actions performed by the Claimant are strictly from when the Federal Project Number (FPN) GA2AAG was opened in 2002, as the original incident was considered paid and complete, and had not been linked to the later incidents until after response had commenced.

- C. The Claim:*** On February 20, 2014, OEPA submitted a removal cost claim to the National Pollution Funds Center (NPFC), for reimbursement of its uncompensated removal costs in the amount of \$141,059.56 for the services provided from June 2003 through November 2013.

The review of the actual cost invoicing and dailies focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were consistent with the NCP or directed by the FOOSC, and (4) whether the costs were adequately documented.

APPLICABLE LAW:

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean "oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil".

"Removal costs" are defined as "the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident". 33 USC § 2701(31).

Removal costs referred to in 33 USC 2702(a) include any removal costs incurred by any person for acts taken by that person which are consistent with the National Contingency Plan. 33 USC 2702(b)(1)(B).

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages.

With certain exceptions all claims for removal costs or damages shall be presented first to the responsible party of the source designated under 2714(a). 33 U.S.C. § 2713(a). If the claim is not settled by any person by payment within 90 days after the date the claim was presented, the claimant may elect to commence an action in court against the responsible party or present the claim to the Fund. 33 U.S.C. §2713(c)(2).

“Claimant” means “any person or government who presents a claim for compensation under this subchapter.” 33 USC § 2701(4).

33 USC § 2712(f), which is entitled “Rights of Subrogation,” provides that payment of any claim or obligation by the Fund under this Act shall be subject to the United States Government acquiring by subrogation all rights of the claimant or State to recover from the responsible party.

Any person, including the Fund, who pays compensation pursuant to this Act to any claimant for removal costs or damages shall be subrogated to all rights, claims, and causes of action the claimant has under any other law. 33 USC § 2715(a).

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136.203, the claimant bears the burden to prove the removal costs were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish –

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

DETERMINATION OF LOSS:

A. Overview:

1. FOSC Coordination has been established via US EPA Region V.¹
2. In accordance with 33 CFR § 136.105(e)(12), the claimant has certified no suit has been filed in court for the claimed uncompensated removal costs.

¹ See US EPA Region V POLREPS 1-16 for this incident, opened 10/15/2002.

3. The claim was submitted within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. A Responsible Party has not been identified. 33 U.S.C. § 2701(32).
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted with the claim and determined which removal costs presented were for actions in accordance with the NCP and that the costs for these actions were indeed reasonable and allowable under OPA and 33 CFR § 136.205.

B. Analysis:

NPFC CA reviewed the actual cost invoices and dailies to confirm that the claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable "removal actions" under OPA and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were determined by the FOSC, to be consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented and reasonable. The Claims Manager validated the costs incurred and determined they were reasonable and necessary and performed in accordance with the National Contingency Plan (NCP).

The USCG MSO Toledo and USEPA Region V were made aware of the incident and the actions OEPA performed. As is exemplified in EPA POLREPS #1-16, the OEPA worked with federal and local agencies alike, as well as with the contractors and potential RPs for this incident to mitigate the effects of the spill, as well as to guide and assist in cleanup and removal activities. Oversight was performed by the USEPA Region V Federal On-Scene Coordinators, as well as USCG MSO Toledo. Therefore, the work performed has been deemed reasonable, necessary and in accordance with the NCP in order to mitigate the effects of the spill.

Based on the evidence in this claim submission, the actions undertaken by OEPA, the Claims Manager hereby determines that the Claimant incurred \$62,704.84 of uncompensated removal costs and that that amount is payable by the OSLTF as full compensation for the reimbursable removal costs incurred by OEPA and submitted to the NPFC under claim #G02AAG-0001. \$78,354.71 in claimed indirect costs are denied as the Claimant has not substantiated how they were derived. Additionally, Indirect Costs generally apply to grants (including contracts, cooperative agreements, etc.) that come to the state from federal and other outside funding sources. While it is true that OMB A-87 guidelines show these types of charges apply to grant programs (where a contract may be in place to include these costs), the OSLTF is not a grant program and is therefore not bound by the terms of OMB Circular A-87. Therefore, this does not apply and all Indirect Costs are subsequently denied as unsubstantiated. These denied costs are reflected in the attached audit of costs for this claim.

The Claimant states that all costs claimed are for uncompensated removal costs incurred by the Claimant for this incident from June 2003 through November 2013. OEPA represents that all costs paid by it are compensable removal costs, payable by the OSLTF as presented by the Claimant.

C. Determined Amount: \$62,704.84

The NPFC hereby determines that the OSLTF will pay \$62,704.84 as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim G02AAG-0001. All costs claimed are for charges paid for by the Claimant for removal actions as that term is defined in OPA and, are compensable removal costs, payable by the OSLTF as presented by the Claimant. 78,354.71 in claimed indirect expenses are denied.

Claim Supervisor:

Date of Supervisor's review: **5/5/14**

Supervisor Action: ***Approved***

Supervisor's Comments: